doctrine of equitable intervention the purported sub-lease would be treated as an agreement for a sub-lease and since it had been partly executed by possession having been taken under it, the equitable remedy of specific performance would be peculiarly appropriate. The facts of the present case make it more analogous to such cases as *Parker* v. *Taswell*[15] where the uncertainty of a contract was urged but where performance had been partly carried out. Lord Chelmsford had this to say when decreeing specific performance (page 1111): "It must be borne in mind that this agreement has been partly executed by possession having been taken under it; and there are many authorities to shew that in such a case the court will strain its power to enforce a complete performance.... The agreement, moreover, is admitted to be sufficiently certain as to all the substantial parts of it, and the only portions of it to which uncertainty is attributed are subordinate matters. No authority has been cited to shew that in such a case specific performance may not be decreed."

Steadman v. *Steadman*[16] is a modern authority for the proposition that a grant of specific performance based on an act of part performance must be referrable to an existing contract between the parties. Viscount Dilhorne and Lord Simon (at pages 992, 999) accepted the statement in *Fry* on Specific Performance (6th ed. (1921) page 278):

"The true principle however of the operation of acts of part performance seems only to require that the acts in question be such as must be referred to some contract, and may be referred to the alleged one; that they prove the existence of some contract and are consistent with the contract alleged."

It remains to deal with the argument as to the effect of the purchase of the premises in 1962 when there was no provision of decontrol under the Control of Rent Ordinance, 1956 but became law as from January 1, 1967 when the Control of Rent Act, 1966 came into force. It was contended that the appellant and his father, the latter having been the tenant of their predecessor in title, ceased to be a tenant and became the owner by merger or surrender by operation of law. As such, the premises became decontrolled. It was then argued that as there was no tenancy of a controlled premises, the Control of Rent Act, 1966 did not apply. *Lloyd* v. *Cook*[17] and a series of related cases were cited in support of the argument. I have come to the conclusion that these cases, however, turned on the interpretation of a statute basically different from our own and particularly on the effect to be given to the decontrol provision for which there is no counterpart in the Control of Rent Ordinance, 1956. In my view, the general principle for Rent Act protection has always been that the subject-matter of protection must be "premises" let or sub-let as a separate human dwelling or partly for human dwelling and partly for business. Once this is accepted as the true principle, then when the premises was purchased in 1962, it did not cease to be controlled premises, and that character did not change with the coming into force of the Control of Rent Act, 1966, for the simple reason that the right of property cannot be taken away by a repealing statute, unless there is an express or implied intention to do so. What section 23 of the Control of Rent Act, 1966 envisages is that on the happening of a certain event, the landlord may apply to the Rent Tribunal for a certificate and upon service of a copy of such certificate, the premises concerned shall cease forthwith to be controlled premises. That requirement was not fulfilled in the present case and that is only possible after January 1, 1977 because the said Act has no retrospective effect.

For the above reasons I would dismiss the appeal with costs.

Wan Suleiman and **Syed Othman F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Gill & Tang; Stanley Ponniah, Ng & Soo.*

PENGARAH TANAH DAN GALIAN, WILAYAH PERSEKUTUAN* v. SRI LEMPAH ENTERPRISE SDN. BHD.

[F.C. (Suffian L.P., Raja Azlan Shah Ag. C.J. (Malaya) and Chang Min Tat F.J.) September 12 and October 21, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 94 of 1978]

Land Law — Applications by developer for sub-division of its land, for conversion of user and surrender of part of land — Land held in perpetuity — Whether Government could impose condition that developer accepts a 99 year lease in exchange — Condition not relating to permitted development and unreasonable — Applications remitted to Government for reconsideration — Federal Constitution, art. 13(1) — National Land Code, ss. 92(2), 124, 136, 137, 138, 196, 200, 201, 202 and 203.

Administrative Law — Applications by developer for sub-division of land for change of express condition of title and for surrender of portion of land — Condition imposed by Government that the developer should accept a 99 year lease in exchange for grant in perpetuity — Condition not relating to permitted development and unreasonable — Excess of power making act invalid as being ultra vires — Applications remitted to Land Executive Committee for reconsideration in the light of judgment of the Court — To what extent order of court should be complied with — National Land Code, ss. 92(2), 124, 136, 137, 138, 196, 200, 201, 202 and 203 — Federal Constitution, art. 13.

Practice and Procedure — Appeal under section 498 of the National Land Code — Whether properly brought by originating motion — Proper party should be the Land Executive Committee — Grounds of appeal not set out in originating motion but in affidavit in support — Service of originating motion — Whether appellant out of time — R.S.C., 1957, O. 58 r. 2, O. 59 r. 13 and O. 70.

Constitutional Law — Right of property — Federal Constitution, art. 13.

In this case the applicant company was the registered proprietor of a piece of land held in perpetuity. The land was in the Federal Territory and the applicant applied to the Federal Government for sub-division of the land and for conversion to have the express condition relating to the user of the land amended to allow the applicant to put up a hotel for which planning permission had been granted. It also applied to surrender part of the land to Government for use as service roads, side and back lanes. The matter was referred to the Land Executive Committee and subsequently the Director of Lands and Mines, Federal Territory,

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* In this case the appellant in the appeal was the Land Executive Committee, and not, as stated in the appeal record, the Pengarah Tanah dan Galian. However, the parties made nothing of this, presumably because the Government agree that whoever is cited as appellant the Government will be bound if the appellant loses.
— Mng. Ed. M.L.J.

informed the applicant that the application would be approved if certain conditions were complied with. The applicant agreed to all of them except one which was that on surrendering the land, the applicant was to receive back in respect of the part to be retained by him not title in perpetuity but a lease of 99 years. The applicant applied to the court for an order that the approving authority approve its application for subdivision upon the usual terms and conditions. In the High Court Harun J. gave judgment for the applicant. The Land Executive Committee thereupon appealed to the Federal Court.

Held: (1) the Government had no power to make the applicant give up its freehold title and receive in exchange a 99 year lease. The condition which the applicant objected to did not relate to the permitted development, it was unreasonable and was used for an ulterior object, the object being to bring developed land into line with newly alienated land as to which only leases not titles in perpetuity are granted;

(2) the applications should be remitted for reconsideration by the Land Executive Committee on behalf of the Federal Government in the light of the law set out in the judgment of the Court;

(3) in reconsidering the applications the Land Executive Committee should act fairly and not arbitrarily and should bear in mind that it had already approved the application subject to the other conditions set out therein.

Cases referred to:-

(1) *Shell Co. of Federation of Malaya Ltd.* v. *Chairman, Municipal Council* [1961] M.L.J. 141, 142.

(2) *Johnson* v. *Johnson* [1969] 1 W.L.R. 1044.

(3) *Youngstown Sheet & Tube Company* v. *Charles Sawyer* [1951] V.S. S.C. 343, 585, 588.

(4) *Ehugbayi Eleko* v. *Officer Administering the Government of Nigeria* [1931] A.C. 662.

(5) *Belfast Corporation* v. *O.D. Cars Ltd.* [1960] 1 All E.R. 65, 70.

(6) *Sir Kameshwar Singh* v. *The Province of Bihar* A.I.R. (1959) Patna 392, 402-471.

(7) *McClintock* v. *The Commonwealth* (1947) 75 C.L.R. 1, 24.

(8) *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government* [1958] 1 All E.R. 625.

(9) *Fawcett Properties* v. *Buckingham County Council* [1960] 3 All E.R. 503.

(10) *Associated Provincial Picture House Ltd.* v. *Wednesbury Corpn.* [1947] 2 All E.R. 685.

(11) *Westminister Corpn.* v. *London and North Western Railway Co.* [1905] A.C. 430.

(12) *Roberts* v. *Hopwood* [1925] A.C. 613.

(13) *Kruse* v. *Johnson* [1898] 2 Q.B. 99.

(14) *Fischer* v. *Secretary of State for India in Council* (1898-99) 26 I.A. 16.

(15) *Fairmount Investments Ltd.* v. *Secretary of State for the Environment* [1976] 1 W.L.R. 1255, 1265-6.

(16) *R.* v. *Hillingdon Council, ex parte Royco Howes Ltd.* [1974] Q.B. 720.

(17) *Bradbury* v. *London Borough of Enfield* [1967] 3 All E.R. 434, 442.

(18) *Chertsey U.D.C.* v. *Mixnam's Properties Ltd.* [1964] 2 All E.R. 627.

(19) *Hall & Co. Ltd.* v. *Shoreham by Sea U.D.C.* [1964] 1 W.L.R. 240.

(20) *Smith* v. *East Elloe Rural District Council* [1956] A.C. 736, 763.

(21) *Kingston-upon-Thames Royal London Borough Council* v. *Secretary of State for the Environment* [1974] 1 All E.R. 193.

The following authorities were also cited in argument: *O'Keefe* v. *Williams* (1910) 11 C.L.R. 171, 220; *Metropolitan Meat Industry Board* v. *Finlayson* (1916) 22 C.L.R. 340, 344; *Lloyd's* v. *Robinson* (1962) 107 C.L.R. 142, 154; *Government of Malaysia* v. *Selangor Pilot Association* [1975] 1 M.L.J. 133, 135; *Charanjit Lal* v. *Union of India* A.I.R. 1951 S.C. 41, 61; *Minister of State of Army* v. *Dalziel* (1943-44) 68 C.L.R. 261, 285.

HIGH COURT[1] (April 19, 1977 and May 24, 1978).

Lim Kean Chye (*S.C. Loh* with him) for the appellants.

Fong Seng Yee, Senior Federal Counsel (*Mohamed Shafie*, Federal Counsel with him) for the respondents.

Cur. Adv. Vult.

Harun J.: This is an appeal under section 418 of the National Land Code (NLC). It concerns a piece of land known as Grant 2412 Lot 82 Section 53 in the City of Kuala Lumpur. The land measuring 31,853 sq. ft. was first alienated to Chin Lim Lee on March 22, 1900 in consideration of the sum of $180 —

"To hold for ever, subject to the payment therefor the annual rent of three dollars and eighty cents, and to the provisions and conditions contained in the Land Enactment, 1891."

Three other conditions endorsed on the said Grant are:

"1. This Grant is subject to the condition that the Grantee shall within two years from the date hereof build upon the land herein described a substantial house to the value at least of $250 and that in default of performance of this condition by the Grantee it shall be lawful for the Resident to revoke this Grant and to resume possession on behalf of the Government of Selangor of the land herein described.

2. If the whole or any portion of the land described in the Grant be subsequently converted into building allotments, such allotments shall be liable to quit rent at the rate of $2 for every 2400 square feet contained therein.

3. The land described herein is affected by an order of the High Commissioner in Council dated 15.10.1952 under section 4 of the Aerodromes (Control of Obstructions) Ordinance 1950, vide Legal Notification No. 563 in the *Gazette* of 23.10.1952 this 23rd day of November 1953 at 2.20 o'clock in the afternoon."

On March 13, 1974, the appellants became the registered proprietors of this land.

On January 7, 1975, the appellants applied to the Collector of Land Revenue, Federal Territory for

"The alteration of the category of land use from Residential to Hotel."

under section 124 NLC.

On May 28, 1975, the appellants applied to the Director of Lands and Mines of the Federal Territory for sub-division of the land under section 137 NLC.

On March 22, 1976, the Director of Lands and Mines of the Federal Territory wrote to the appellants. That letter was received by the appellants on March 26, 1976. The English translation of the letter reads as follows:

"M/s. Sri Lempah Enterprise,
60-C, Jalan Bukit Bintang,
Kuala Lumpur.

Tuan,

Application for:—

(i) Alteration of category of land use under section 124(1)(a) NLC from which the land Grant 2412 Lot 82 Section 53 City of Kuala Lumpur is for the time being subject to imposing new express conditions under section 124(1)(c) NLC to enable the land to be used for commercial building;

(ii) Sub-division of the land under section 137 NLC; and

(iii) Surrender of part of the land under section 200 NLC for road improvements.

I am directed to inform you that the Land Executive Committee of the Federal Territory has considered this application and agreed that your application will not be considered in the manner presented. However, the Committee has agreed to approve the surrender of the whole of Grant 2412 Lot 82 Section 53 City of Kuala Lumpur when formal application is made in accordance with section 197 NLC. Following surrender of the whole of the land the Committee agrees to approve the re-alienation of part of the land surrendered to the former proprietors of the land in accordance with the plots edged in blue on Plan R/S. Bil. 114/74 for the construction of a 4-storey hotel and three adjacent plots for shop-houses subject to the following conditions and payments:

A.	Form of Title	:	Registry Title
	Term	:	Federal lease for 99 years
	Premium	:	$2.40 per sq. ft.
	Quit Rent	:	12 sen per sq. ft.
	Survey's fees etc.	:	In accordance with prescribed rates.
	Category of Land Use	:	Building.

Express Conditions:—

(a) The land shall only be used for Commercial Building.

(b) The construction of building on the land shall comply with the Building Regulations issued by the Datuk Bandar.

B. Titles will not be issued and compensation will not be paid to you for areas required for road reserves as shown in yellow on plan R/S Bil. 114/74.

2. The payment that is required to be made is as follows:—

Additional Premium: $43,392.00

3. The payment of the aforesaid $43,392.00 is based on a rough calculation of the area which will be newly alienated amounting to 18,080 sq. ft. at $2.40 per sq. ft. Additional premium will be payable when the exact area is known after completion of survey.

4. If agreeable please pay the amount mentioned above within six (6) months of the date of this letter. Attached herewith are 3 copies of Form 12A for the purpose of complying with the surrender of the land. Please complete the forms and return them together with Grant 2412 of the City of Kuala Lumpur to enable action to be taken regarding the surrender. You are also requested to complete application for land (Schedule I) so that action can be taken to re-alienate the said land together with application registration fee of $5.00. Please also send a photostat copy of quit rent receipt for 1976.

That is all.

Saya yang menurut perintah,
Sgd.
(Abdul Samat bin Sabri)
b.p. Pengarah
Tanah & Galian Wilayah Persekutuan
Kuala Lumpur."

On June 22, 1976 the appellants filed this appeal. At the hearing there were three applications:

(i) The Originating Motion filed by the appellants on June 22, 1976;

(ii) An Amended Notice of Motion filed by the respondent on August 30, 1976 to set aside these proceedings; and

(iii) A Notice of Motion filed by the appellants on August 30, 1976 to substitute the Pengarah Tanah & Galian for Jawatankuasa Kerja Tanah as respondent.

Preliminary Objections:

The two applications filed on August 30, 1976 were neard first. The respondent contends:

(a) that the Pengarah Tanah dan Galian Wilayah Persekutuan is wrongly cited as respondent to the Originating Motion;

(b) that the Pengarah Tanah dan Galian Wilayah Persekutuan is not a legal entity against whom civil proceedings may be instituted;

(c) that the proceedings by way of Originating Motion is misconceived and bad in law in that it is not a proper procedure to adopt on an appeal under section 418 of the National Land Code;

(d) that the Originating Motion does not state the grounds of the appeal;

(e) that the purported appeal by way of this Originating Motion was not made within the time specified in section 418 of the National Land Code, 1965.

Grounds (a) & (b):

The respondent here is "Pengarah Tanah dan Galian, Wilayah Persekutuan, Kuala Lumpur" or in English, the Director, Lands and Mines, Federal Territory, Kuala Lumpur. Mr. Fong says there is no such office in the National Land Code or legal entity for the purpose of being sued. He suggests that the Land Executive Committee should be the respondent as it is against the decision of that body that the appellant is appealing against. Mr. Lim says the non-existent person actually wrote and signed the letter of March 22, 1976 which is the subject-matter of these proceedings. He concedes however, there is a mistake albeit induced by the aforesaid Director and hence the appellants' application to substitute the Jawatankuasa Kerja Tanah (Land Executive Committee) as the respondent.

There appears to be some confusion here which requires an explanation. By reason of The Constitution (Amendment) (No. 2) Act, 1973, the Federal Territory was established by excision of part of the territory of the State of Selangor. As a consequence, the Selangor State Commissioner of Lands and Mines ceased to exercise any powers in the Federal Territory. These powers were transferred to the Land Executive Committee by the Federal Territory (Modification of National Land Code) Order 1974 (P.U. (A) 56/74). Section 12 NLC provides for the appointment of a Commissioner of Lands and Mines in every State but the Modification Order of 1974 specifically omitted any such appointment for the Federal Territory but instead made provision for the appointment of the Land Executive Committee to exercise the powers of the State Commissioner. By these changes, references to "the State Commissioner" in the National Land Code "shall be construed as references to" the Land Executive Committee. "It follows that for purposes of an appeal under section 418 in respect of lands in the Federal Territory, the Land Executive Committee should be substituted for "the State Commissioner."

What then of the Director of Lands & Mines of the Federal Territory. Clearly this is not an appointment under section 12 NLC. But he undoubtedly exists. His appointment is to be found in the Staff List of the Federal Government and also in the Budget Estimates approved by Parliament for the Prime Minister's Department. He has an office called the Federal

Territory Land Office as shown in the letter of March 22, 1976. He is, however, not the legal equivalent of the State Directors of Lands & Mines as the State Commissioners of Lands & Mines have been known since September 1, 1970 pursuant to an Order issued under section 3 of the Titles of Office Ordinance, 1949: P.U. (B) 324/70. His appointment is therefore an administrative one to act as a secretariat to service the Land Executive Committee (hereinafter referred to as Land Ex. Co.).

It is a fact that the decision appealed against was made by the Land Ex. Co. and it is common ground that it should be the respondent in this appeal. Mr. Lim's application, however, is that the "Jawatankuasa Kerja Tanah" should be substituted as the respondent. The Modification Order of 1974 has not given a national language version of the Land Ex. Co. Further the authoritative text of the National Land Code is still English: see National Language Act 1963/67. I am of the view that the respondent should be the Land Executive Committee and not the Jawatankuasa Kerja Tanah.

Be that as it may, Mr. Fong says that no substitution should be allowed as the remedy is barred by limitation and the amendment is not a mere misnomer. I do not agree. Here there had been a genuine mistake which had not misled the respondent in any way. I accordingly allowed the application of the appellants to strike out the name of Pengarah Tanah & Galian and substitute therefor the name of The Land Executive Committee.

Ground (c):

This ground was withdrawn by the learned Senior Federal Counsel as it is now settled law that the procedure of an appeal under section 418 NLC is regulated by RSC. O.59 r.13.

Ground (d):

The Originating Motion does not set out the grounds of appeal as is required by RSC. O.59 r.13(1): *Shell Co. of the Federation of Malaya Ltd.* v. *Chairman, Municipal Council.*[1] In fact the Originating Motion is a prayer for an order to compel the Director of Lands & Mines to approve the sub-division. However, the supporting affidavit which was served with the Originating Motion sets out very clearly the grounds of appeal and also the evidence on which the court is asked to consider the grounds of appeal. Mr. Fong says that failure to state the grounds of appeal is not a matter of form but of substance and he relied on *Johnson* v. *Johnson.*[2] With respect I do not think that that case is in point as there Brandon J. was dealing with a rule providing for a notice of motion by which an appeal is brought but making no provision for a supporting affidavit. Admittedly in this case the Originating Motion has not set out the grounds of appeal but in view of the supporting affidavit, I hold that the failure to comply with the content of the Originating Motion is an irregularity which can be cured by RSC. O.70.

Ground (e):

The decision of the Land Ex. Co. was conveyed by the letter dated March 26, 1976 and received by the appellants on March 26, 1976. Time therefore begins to run from March 26, 1976. The appeal was filed in court on June 22, 1976. It was served on the Director of Lands & Mines on July 8, 1976 and on the Land Ex. Co. on January 17, 1977. The respondent says that the appellants are out of time. Section 418 NLC reads:

> "(1) Any person or body aggrieved by any decision under this Act of the State Commissioner, the Registrar or any Collector may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
>
> (3) In this section 'decision' includes any act, omission, refusal, direction or order."

It would appear that although there is a provision under section 418 NLC to file the appeal in the High Court within three months of a decision, there is no provision in that section that the party appealed against should be *served* with the Originating Motion within the said three months. The only provision regarding service in such a case is contained in RSC. 1957 O.59 r.13(3) which reads:

> "(3) Unless otherwise provided by any written law, notice of the motion shall be served on the respondent in such appeal or where the respondent is a body of persons on the secretary, registrar or such other officer of that body of persons."

This provision regarding service is different from RSC. O.59 r.2(2) regarding appeals from Subordinate Courts to the High Court where "the appellant shall within the like period serve each respondent with a copy of such memorandum and a copy of the appeal record." See also RSC. O.58 r.2. It follows that an appeal under section 418 NLC must be filed in the High Court within three months of a decision but service of the Originating Motion need not be effected within the said three months but follow the normal course for service with regard to Originating Motions. That being the case the appellants here were not out of time. The fact that a wrong respondent was first cited makes no difference. More so in the present case where it was obvious to everyone that the appeal is against the decision of the Land Ex. Co. which "is a body of persons" and service initially effected on the officer who conveyed that decision as "the officer of that body of persons." I therefore dismissed the respondent's application to set aside these proceedings.

Grounds of Appeal:

I now turn to the substantive issues in this appeal. It may be recalled that the appellants hold the land in perpetuity. In order to develop this land they applied for sub-division and conversion. In response to their applications, the Land Ex. Co. made a counter-proposal to the effect that the appellants should surrender their perpetuity title to the State in return for 99-year leases and the approval of their applications. The leased lands will be less in area than the existing area as some portions of it will be retained by the State for public road improvements and service roads. The appellants consent to giving up their lands for road building purposes but object strongly to exchanging their perpetuity title for 99-year leases. The main issue in this appeal is whether the Land Ex. Co.

has the power to impose the surrender of a perpetuity title in exchange for 99-year leases as a condition precedent to the approval of applications for sub-division and conversion. Three questions arise for consideration of the main issue viz.:

(i) sub-division;

(ii) conversion; and

(iii) surrender of title.

Sub-Division:

To sub-divide land an application in writing has to be made to the Collector in Form 9A: section 137 NLC. Here the appellants used Form 9A but addressed it instead to the Pengarah Tanah & Galian Wilayah Persekutuan.

As the land is held under Registry Title the approving authority is the Land Ex. Co.: section 135 NLC. Certain conditions must be complied with before approval can be given to sub-divide land: section 136 NLC. According to Mr. Fong, the appellants have complied with all the conditions except two which are:

"Section 136(1) No sub-division shall be approved by the State Commissioner or, as the case may be, Collector unless the following conditions are satisfied —

(a) that the sub-division would not contravene any restriction in interest to which the land is for the time being subject;

(b) that the sub-division would not be contrary to the provisions of any written law for the time being in force, and that any requirements imposed with respect thereto by or under any such law have been complied with;"

Restriction in interest:

Mr. Fong contends that the restriction in interest of this land is 'residential' with an implied condition that it be used for agricultural purposes under section 53(2)(b) NLC. I do not think that section 53 applies in this case for two reasons:

(i) The land is subject to an express condition requiring its use for a particular purpose viz. 'residential' immediately before the commencement of the NLC and is therefore excepted by section 53(1) NLC.

(ii) The land is not held under Land Office Title and therefore section 53(2) does not apply.

"Restriction in interest" means any limitation imposed by the State Authority on any of the powers conferred on a proprietor by Part Nine, or on any of his powers of dealing under Division IV, and any like limitation imposed under any previous land law: section 5 NLC. Nowhere in the Grant is there imposed any restriction in interest for instance that the proprietors cannot sub-divide the land. There is however an express condition that the land be used for residential purpose but this is not restriction in interest: section 5 NLC "condition" does not include any restriction in interest.

Contrary to law:

Again according to Mr. Fong, the written law referred to in section 136(l)(b) means section 124 NLC. I do not think so. Section 124 deals with conversion and if that is approved the effect will be to change the express condition imposed on the land. What it does mean is that there must be compliance with building regulations and so on. This is obvious from section 136(l)(c) which sets out the requirements intended in section 136(l)(b). I find as a fact that the appellants have complied with all the conditions imposed by section 136 NLC. It is common ground that if that is so then the Land Ex. Co. cannot withhold approval for sub-division for the reason that section 138(2) NLC provides that it "shall approve the sub-division in accordance with the said proposals, ..." To the extent that the decision of the Land Ex. Co. purports to approve the sub-division on condition that the registered proprietors surrender the perpetuity title in exchange for 99-year leases, I hold that this condition is void since it is imposed not in accordance with law. It follows that the appellants are entitled to approval of their application for sub-division *per se*.

Conversion:

An application for conversion under section 124 NLC, however, is another matter. In the Federal Territory the approving authority for such applications is the Land Ex. Co. by virtue of delegation of powers by the Federal Government under section 13 NLC: P.U. (B) 597/74. The relevant parts of section 124 which concern us here are:

"Section 124(1) The proprietor of any alienated land may apply to the State Authority under this section for —

(a) the alteration of any category of land use to which the land is for the time being subject or, where it is not so subject, for the imposition of any category thereon;

(b) the amendment of any express condition or restriction in interest endorsed on, or referred to in, the document of title thereto, or the imposition of any new express condition:

Provided that the State Authority shall not entertain any such application unless it is satisfied with respect to every person or body having a registered interest in the land, or in occupation of any part thereof under any tenancy exempt from registration, either that he has consented thereto or that his consent ought in the circumstances of the case to be dispensed with.

(2) Where the State Authority approves any application under paragraph (a) of sub-section (1), —

(a) it shall direct that the category of land use specified in the application be endorsed on the document of title to the land, and the existing category (if any) deleted, and

(b) it may if it thinks fit direct that there shall also be endorsed on the document of title such new express conditions as are specified in the direction, being conditions relating to any of the matters mentioned in section 121 or, as the case may be, 122;

and, as from the date on which the direction is carried into effect —

(i) the land shall become subject to any conditions endorsed pursuant thereto and (according to the category of land use so endorsed) to the conditions implied by section 115, 116 or 117;

(ii) there shall cease to apply to the land all conditions to which it was previously subject except those implied under section 114 and, where applicable, 118.

(4) The State Authority may approve any application under paragraph (c) of sub-section (1) either in the terms in which it was submitted or, *with the consent of the applicant* and any other persons or bodies whose consent thereto was required under the proviso to that sub-section, subject to such modifications as it may think fit, and shall, in either case, direct as appropriate —

(a) the amendment of any condition or restriction in interest endorsed on the document of title to the land, or

(b) the endorsement on that document of title of a note of the amendment of any condition or restriction which is merely referred to therein, or

(c) the endorsement on that document of title of any new condition.

(5) Any direction given by the State Authority under this section may be made conditional upon all or any of the following matters —

(a) the payment of a further premium;

(b) the reservation of a new rent;

(c) *compliance with such other requirements as the State Authority may think fit.*"

I pause here to deal with a point raised by Mr. Lim. He contends that the appellants' application under section 124 NLC in the instant case was misconceived and irrelevant on the grounds that the existing category of land use of the land is 'building' so that to change it from a house to a hotel does not require a change of category as both are buildings within the definition of "building" in section 5 NLC which includes "any structure erected on land."

The NLC provides for three categories of land use viz.:

(i) Agriculture — section 115;

(ii) Building — section 116; and

(iii) Industry — section 117.

The building category is further subject to specified purposes e.g. residential; commercial; educational; recreation: section 116(4). And that the building may not be demolished, altered or extended without the prior consent in writing of the Land Ex. Co.: section 116(1)(d). It seems to me by reason of section 124 read with section 116 that even if the category is 'building' approval is required to change the type of buildings on the land. Here the application is not to change the category of land use under section 124(1)(a) since it is already in the building category but amendment of the express condition endorsed on the grant from "residential" to "commercial" which can only be obtained under section 124(1)(c). I therefore hold that it was necessary for the appellants to apply for conversion before they can build the hotel and shop-houses on this land.

The Chairman of the Land Ex. Co. in his affidavit stated that the appellants in their application for conversion did not apply to amend the express conditions on the Grant. I do not think this is of any consequence as the appellants had stated albeit incorrectly on the application:

"The alteration of the category of land use from Residential to Hotel."

It is a mere technicality as to whether the application is under section 124(1)(a) or section 124(1)(c), but the intention of the appellants was obvious and the Land Ex. Co. was never misled as is clear from the letter of March 22, 1976.

Returning now to the application for conversion itself. It appears from the scheme of section 124 as a whole that the Land Ex. Co. is not compelled to approve such applications as it is required in the case of sub-divisions. In the present case they have in fact approved the application for conversion in principle subject to the surrender and exchange of titles. This brings us to the third question.

Surrender of Title:

The procedure for surrender of titles is governed by Part Twelve of the NLC: sections 195 to 204. In the instant case the surrender of title in fact arises from two separate exercises viz. that following sub-division and the other following conversion.

Surrender of Title with sub-division:

The application for sub-division included proposals for road improvements and service roads. This meant that the application for sub-division was accompanied by an application to surrender to the State a portion of the land held under the perpetuity title in accordance with section 195(1)(b). The procedure for this type of surrender of title is governed by sections 200 and 201. The appellants thereafter are entitled to a perpetuity title to the lands retained as "the Registrar ... shall issue title in continuation to the part so retained as if he were issuing title in continuation to land as a whole;": section 202(3)(a). It follows that no question of exchange of perpetuity title for leases arises here.

Surrender of Title with Conversion:

There is no application by the appellants to surrender the whole of the perpetuity title as is envisaged by section 195(1)(a). In any event there is no consent of the appellants —

(i) to such a surrender under section 196(1)(c); or

(ii) as a condition for conversion under section 124(4).

In his affidavit, the Chairman of the Land Ex. Co. stated:

"It is within the absolute discretion of the Jawatankuasa Kerja Tanah to grant or reject any application under section 124 of the National Land Code or impose such conditions or other requirements as the Jawatankuasa Kerja, Wilayah Persekutuan thinks fit."

It would appear that the Land Ex. Co. is relying on section 124(5)(c): "... compliance with such other requirements as the Land Ex. Co. may think fit." when it made approval of the conversion application conditional upon the exchange of perpetuity title for 99-year leases.

It is argued that section 124(5)(c) is wide enough for the Land Ex. Co. to impose such a condition. Against this there is here a specific grant in perpetuity with an express condition that in the event the registered proprietors convert the land into building allotments they will be required to pay increased quit rents: Endorsement No: 2. The appellants are able and willing to pay the increased quit rents and even a further premium. It would appear that all they are asking for is to exercise their rights conferred by the Grant itself. The question arises whether section 124(5)(c) is wide enough to curtail the exercise of those rights by the imposition of a new condition which has the effect of changing the very character of the Grant which the appellants now hold. There can be no doubt that *per se* a perpetuity title is more valuable than a 99-year lease. The appellants contend that the letter of March 22, 1976 amounts to deprivation of property without adequate compensation. They also say that the Land Ex. Co. has no legislative authority to impose such a condition and that it was merely acting in accordance with Government policy.

In support of these contentions, Mr. Lim referred to the following authorities:

(i) *Youngstown Sheet & Tube Company* v. *Charles Sawyer.*[3]

(ii) *Eshugbayi Eleko* v. *Officer Administering the Government of Nigeria.*[4]

(iii) *Belfast Corporation* v. *O.D. Cars Ltd.*[5]

(iv) *Sir Kameshwar Singh* v. *The Province of Bihar.*[6]

(v) *McClintock* v. *The Commonwealth.*[7]

The gist of these authorities may be summarised as follows: No person shall be deprived of his property by a mere executive, administrative or prerogative act. If the executive takes the property of any person, it must be prepared to justify that act under the authority of a valid law.

Now this is not new to us as Article 13 of the Federal Constitution provides:

"13(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation."

And as far as lands are concerned, The Land Acquisition Act, 1960 provides not only for the payment of compensation but also for what specific purpose lands may be acquired by the State.

What is happening here is not strictly "deprivation" or "taking" of property since the appellants will be getting their land back but at most a diminution of the title to which they now enjoy. It is arguable whether in the instant case there will in fact be a reduction in the value of the title to the land since in economic terms the difference is whether a piece of land situated at the junction of the Sungei Besi — San Peng and Pudu roads is more valuable as a residential house with a perpetuity title or as a hotel-cum-shop-houses on a 99-year lease. The immediate returns of the latter would certainly be more attractive than the former. It may well be that it was on these economic assumptions that the Land Ex. Co. seized the opportunity to implement the policy of the Government to convert existing perpetuity titles to periodic leases in the interest of future development of the City of Kuala Lumpur. It is true that the respondent has not stated precisely that this is the position but it is a reasonable inference to be drawn from the fact which is of public knowledge that for some years now the Government has practically ceased alienating new land in perpetuity but favoured instead the issue of leases not exceeding 99 years, particularly in respect of town lands.

If that be the case, I am of the view that such a radical change in land administration should be effected by legislation. If that is done then the public is forewarned and the purchase price of lands held under perpetuity titles by intending developers would be regulated by the probability that the developers may have to exchange their newly acquired perpetuity titles with leases of 99 years or less.

Finally, the grant to the land was made under the Land Enactment of 1891. Successive Lands Enactments of 1903, 1911, 1926 and the Land Code, F.M.S. Cap. 138 have all preserved the rights of registered proprietors to perpetuity title in terms similar to section 4 NLC which reads:

"4(1) Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act:

Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act."

Surrender of title may only be made with the consent of the registered proprietor and the approval of the Land Ex. Co. There is no power under the NLC to compel a registered proprietor to surrender the title to his land except by means of forfeiture for non-payment of rent or the breach of any condition: sections 130 to 134 NLC. It follows that the power given by the legislature to the Land Ex. Co. by section 124(5)(c) to impose conditions as it may think fit is restricted to conditions that it may otherwise impose under the NLC itself or under any other written law.

For these reasons I hold that the Land Ex. Co. has exceeded its jurisdiction in directing that approval for conversion under section 124 NLC is conditional upon the appellants surrendering their perpetuity title in exchange for 99-year leases.

There remains the matter of 'absolute discretion' asserted by the Land Ex. Co. in the approval of applications for conversion. Section 124(4) NLC provides *inter alia*:

the Land Ex. Co. "may approve any application . . ." either

"in the terms in which it was submitted . . ."

or

"with the consent of the applicant . . . subject to such modifications as it may think fit . . ."

I do not think that these provisions confer an absolute discretion on the Land Ex. Co. to approve or reject applications as it pleases. It may only approve applications which comply with the provisions of that section. Of course it has the power to reject applications but in exercising this power it must act in accordance with natural justice, equity and good conscience. It may be called upon to give reasons for its decisions. This is clearly contemplated by the National Land Code in providing for appeals to the High Court from the decisions of the Land Executive Committee: section 418 NLC.

In my judgment the appellants are entitled to:

(i) Approval of their application for sub-division;

(ii) Approval of their application for conversion; and

(iii) Grants in perpetuity to the sub-divided lots retained by them.

There will be an order that:

(i) the Land Executive Committee approve the application for conversion under section 124(1)(c) NLC in terms of the proposal pertaining to conversion contained in the letter of the Director of Lands & Mines, Federal Territory dated March 22, 1976 but excluding the condition that the appellants surrender the whole of Grant 2412 Lot 82 Section 53 City of Kuala Lumpur in exchange for a Federal Lease for 99-years; and

(ii) the Land Executive Committee approve the application for sub-division under section 136 NLC in terms of the proposal pertaining to sub-division contained in the said letter of the Director of Lands & Mines of the Federal Territory dated March 22, 1976 but that there shall be no surrender of the aforesaid title in the manner described therein and further that the Registrar shall issue titles in continuation of the Grant in perpetuity to the sub-divided lots retained by the appellants in accordance with section 202(3)(a) NLC; and

(iii) the respondent pays the costs of this application.

From the above judgment the appellant appealed to the Federal Court.

FEDERAL COURT.

Lim Beng Choon (Senior Federal Counsel) for the appellant.

Lim Kean Chye (*Wong Soon Foh* with him) for the respondent.

Cur. Adv. Vult.

Suffian L.P.: The applicant Company (respondent before us) was and is the registered proprietor of a piece of land held in perpetuity under Grant No. 2414, Lot 82, Section 53, in the City of Kuala Lumpur, subject to the following, *inter alia*, express condition: —

"This Grant is subject to the condition that the Grantee shall within two years from the date hereof build upon the land herein described a substantial house to the value at least of $250."

Be it noted that the applicant had and has title in perpetuity and that it or its predecessor in title must build a house on the land.

The applicant planned to develop the land, by sub-dividing it into seven lots, each under separate title. The approving authority for sub-division in the Federal Territory is the Land Executive Committee (appellant before us) but first the applicant must obtain clearance from the planning authority, paragraph (c) of subsection (1) of section 136 of the National Land Code ("the Code"). So on October 19, 1973, the applicant applied to the City Planner for permission to sub-divide the land into seven lots and to erect on each of them a four-storey building, which permission was granted. Then the applicant changed its mind and decided to build on four of the lots a four-storey hotel, and so it applied to have the planning permission amended. This too was granted by the City Planner.

Approval by the City Planner alone is not enough, there must also be approval by the authorities prescribed under the National Land Code, and the most important approvals required are for changing (converting) the express condition of the title from mere building to hotel, for sub-dividing the land into smaller lots, and for surrender of part of the land for use as access roads and back lanes and so on. It is convenient to make these applications simultaneously, and accordingly on January 8, 1975, the applicant submitted three applications to the Land Executive Committee as follows:

(1) under section 124(1)(c) of the Code — for conversion, to have the express condition relating to building amended, to allow the applicant to put up the building cleared with the City Planner;

(2) under section 137 of the Code — to sub-divide the land into the four lots cleared with the City Planner; and

(3) under section 200 of the Code — to surrender part of the land to Government for use as service roads, side and back lanes.

It is now convenient to reproduce the relevant provisions of the Code. (It is to be noted that references therein to the State Authority should be read as references to the Federal Government, this land being within the Federal Territory, and that the approving authority in respect of it is the Land Executive Committee).

"92. (2) The rights exercisable by any person or body to whom State land has been alienated under final title [such as the land in question] shall include the following —

(a) the right (subject to the provisions of this Act and to any restriction in interest to which the land is for the time being subject) to sub-divide ... the land ... in accordance with the provisions of Chapters 1 to 3 of Part Nine.

124. (1) The proprietor of any alienated land may apply to the State Authority under this section for —

(c) the amendment of any express condition or restriction in interest endorsed on, or referred to in, the document of title thereto, or the imposition of any new express condition.

(4) The State Authority may approve any application under paragraph (c) of sub-section (1) either in the terms in which it was submitted or, *with the consent of the applicant* ... subject to such modifications as it may think fit, and shall, in either case, direct as appropriate —

(a) the amendment of any condition or restriction in interest endorsed on the document of title to the land, or

(b) the endorsement on that document of title of a note of the amendment of any condition or restriction which is merely referred to therein, or

(c) the endorsement on that document of title of any new condition.

(5) Any direction given by the State Authority under this section may be made conditional upon all or any of the following matters —

(a) the payment of a further premium;

(b) the reservation of a new rent;

(c) *compliance with such other requirements, as the State Authority may think fit.*

(7) On making any endorsement, cancellation or other entry pursuant to a direction under this section, the Registrar shall note on the document of title the date thereof and authority therefor, and shall authenticate the same under his hand and seal.

136. (1) No sub-division shall be approved by the State Commissioner or, as the case may be, Collector unless the following conditions are satisfied —

(a) that the sub-division would not contravene any restriction in interest to which the land is for the time being subject;

(b) that the sub-division would not be contrary to the provisions of any written law for the time being in force, and that any requirements imposed with respect thereto by or under any such law have been complied with;

(c) without prejudice to the generality of paragraph (b) —

(i) that any necessary approval of any planning authority has been obtained, and

(ii) that the sub-division would not be contrary to any plan approved by the State Authority for the development of the area in which the land is situated or to any decision of any planning authority for that area, and

(iii) if the case falls within any direction in that behalf given by the State Authority, that the sub-division

has the consent of any body or authority specified in, or appointed by, the direction;

(d) that no item of land revenue is outstanding in respect of the land;

(e) that every person or body who, at the time when the approval was applied for, was entitled to the benefit of —

(i) a charge of the land,

(ii) a lease of the whole or any part thereof, other than a part corresponding precisely to that of the proposed sub-divisional portions,

(iii) a charge of such a lease, or

(iv) a lien over the land or any such lease,

has consented in writing to the making of the application;

(f) that the area of any sub-divisional portion —

(i) in the case of land subject to the category 'agriculture', or to any condition requiring its use for an agricultural purpose, will not be less than one acre, and

(ii) in any other case, will not be less than the minimum area appropriate for land of the class or description in question, as determined for the purposes of this sub-paragraph by the planning authority for the area in which the land is situated or (if there is no such authority) by the State Authority;

(g) that the shape of each sub-divisional portion will, in his opinion, be suitable for the purposes for which it is intended to be used;

(h) that, except in the case of any sub-divisional portion from which there will be direct access thereto, a satisfactory means of access will be available as of right from each such portion either to a road, a river, a part of the foreshore or a railway station, or to a point within the land from which such a means of access will be available or be capable of being obtained by application to the Collector under Part Twenty-eight.

137. (1) Any application by a proprietor for approval of the sub-division of any land shall be made in writing to the Collector in Form 9A, and shall be accompanied by —

(a) such fee as may be prescribed;

(b) a plan of the land on a scale sufficient to satisfy the Collector of all the details of the sub-division, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Collector may require;

(c) if it is so prescribed or, in the absence of any such prescription, if the Collector so requires, a copy of any approval or consent required under paragraph (c) of sub-section (1) of section 136; and

(d) all such written consents to the making of the application as are required under paragraph (e) of that sub-section:

Provided that, in a case where paragraphs (c) and (e) of sub-section (1) of section 136 are not applicable and the land is held under Land Office title, the Collector may if he thinks fit accept an application in any form and dispense with or modify the requirements of paragraph (b) of this sub-section.

(2) Upon receiving any application under sub-section (1), the Collector shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land to which it relates.

138. (1) Where any application under sub-section (1) of section 137 relates to land the sub-division of which is required to be approved by the State Commissioner, the Collector shall refer the application to the State Commissioner together with his recommendations thereon.

(2) If on any application under the said sub-section (1) it appears to the Collector or, in a case referred to him as aforesaid, the State Commissioner —

(a) that the conditions for approval of the sub-division specified in sub-section (1) of section 136 are satisfied, or

(b) that those conditions would be satisfied if the proposals in the application were modified in one or more minor respects,

the Collector or, as the case may be, State Commissioner *shall* approve the sub-division in accordance with the said proposals, modified where necessary as mentioned in paragraph (b).

(3) In any other case, the Collector or, as the case may be, State Commissioner shall reject the application.

(4) On approving, or being informed by the State Commissioner that he has approved the sub-division of any land, the Collector shall notify the proprietor of the approval, and of any modification subject to which it is given, and shall by such notification call upon the proprietor to pay him —

(a) in a case where the sub-divisional portions are to be surveyed by a Survey Officer, the amount, or estimated amount, of the fees chargeable in respect of the survey, and

(b) in every case, the fees chargeable in connection with the preparation and registration of final documents of title to the several sub-divisional portions.

(5) On rejecting, or being informed by the State Commissioner that he has rejected, any application, the Collector shall notify the proprietor, and shall cancel, or cause to be cancelled, the note endorsed on the register document of title pursuant to sub-section (2) of section 137.

196. (1) No surrender, whether of the whole or a part only of any alienated land, shall be approved by the State Commissioner or, as the case may be, Collector unless the following conditions are satisfied —

(a) that no item of land revenue is outstanding in respect of the land;

(b) that the land is not under attachment by any court; and

(c) that every person or body specified in sub-section (2) has consented in writing to the making of the application.

(3) No surrender of a part only of any alienated land shall be approved if, in the opinion of the State Commissioner or as the case may be, Collector, the area of the part is such that a sub-division of the land ought first to be effected.

200. (1) Any application for approval by a proprietor wishing to surrender a part only of the land comprised in his title shall be made in writing to the Collector in Form 12B, and shall be accompanied by —

(a) such fee as may be prescribed;

(b) a plan showing the details of the proposal, together with such number of copies thereof as may be prescribed or, in the absence of any such prescription, as the Collector may require;

(c) all such written consents to the making of the application as are required under paragraph (e) of sub-section (1) of section 196; and

(d) subject to sub-section (3), the issue document of title to the land.

(2) Upon receiving any such application, the Collector shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land.

201. (1) Where any application under sub-section (1) of section 200 relates to land the surrender of which requires the approval of the State Commissioner, the Collector shall refer the application to him, together with his recommendations thereon.

(2) If on any application under the said sub-section the Collector or, in a case referred to him as aforesaid, State Commissioner is satisfied —

(a) that the part proposed to be surrendered is in fact used, or intended to be used, for a religious, educational, charitable or public purpose,

(b) that the conditions specified in sub-section (1) of section 196 are fulfilled, and

(c) that approval ought not to be withheld on the grounds specified in sub-section (3) of that section,

he *shall* approve the surrender.

(3) In any other case, the Collector or, as the case may be, State Commissioner shall reject the application.

(4) On approving, or being informed by the State Commissioner that he has approved the surrender, the Collector shall —

(a) revise (by reference to the estimated area of the part to be retained) the rent payable by the proprietor;

(b) notify the proprietor of the approval and the revised rent; and

(c) make, or cause to be made, a memorial of the surrender on the register and issue documents of title to the land.

202. (1) Upon the making of any memorial pursuant to subsection (4) of section 201, the part in question shall revert to and vest in the State Authority as State land; and the provisions of paragraphs (a) and (b) of section 131 shall apply as if the part had reverted pursuant to a forfeiture.

(3) As soon as may be after the making of the memorial, the part retained by the proprietor shall, in the case of land held under Registry title or Land Office title, be resurveyed in accordance with the provisions of section 396; and, on completion of the survey —

(a) the Registrar or Collector shall issue title *in continuation to the part so retained* as if he were issuing title *in continuation to land as a whole*, and

(b) the said revised rent shall be re-calculated by reference to the actual area of the part as established by the survey."

On March 22, 1976, the Director of Lands and Mines, Federal Territory, on behalf of the Land Executive Committee, wrote a letter to the applicant saying that the applications would not be considered, but that they would be approved if certain conditions were complied with. The applicant agreed to all of them, except one with which we are concerned and that is this, that on surrendering the land, the applicant was to receive back in respect of the part to be retained by it, not title in perpetuity but a lease of 99 years. That letter reads as follows:

"I am directed to inform you that the Land Executive Committee of the Federal Territory has considered this application [for amendment of express condition under section 124, for sub-division under section 137 and for surrender under section 200] and agreed that your application will not be considered in the manner presented. However, the Committee has agreed to approve the surrender of the whole of Grant 241 Lot 82 Section 53 City of Kuala Lumpur when formal application is made in accordance with section 197 NLC. Following surrender of the whole of the land the Committee agrees to approve the re-alienation of part of the land surrendered to the former proprietors of the land in accordance with the plots edged in blue on Plan R/S. Bil. 11/74 for the construction of a 4-storey hotel and three adjacent plots for shop-houses subject to the following conditions and payments:

A. Form of Title	:	Registry Title
Term	:	Federal lease for 99 years
Premium	:	$2.40 per sq. ft.
Quit Rent	:	12 sen per sq. ft.
Survey's fees etc.	:	In accordance with prescribed rates.
Category of Land Use	:	Building.

Express Conditions:—

(a) The land shall only be used for Commercial Building.

(b) The construction of building on the land shall comply with the Building Regulations issued by the [Mayor of Kuala Lumpur].

B. Titles will not be issued and compensation will not be paid to you for areas required for road reserves as shown in yellow on plan R/S Bil. 114/74.

2. The payment that is required to be made is as follows:—

Additional Premium: $43,392.00

3. The payment of the aforesaid $43,392.00 is based on a rough calculation of the area which will be newly alienated amounting to 18,080 sq. ft. at $2.40 per sq. ft. Additional premium will be payable when the exact area is known after completion of survey.

4. If agreeable please pay the amount mentioned above within six (6) months of the date of this letter. Attached herewith are 3 copies of Form 12A for the purpose of complying with the surrender of the land. Please complete the forms and return them together with Grant 2412 of the City of Kuala Lumpur to enable action to be taken regarding the surrender. You are also requested to complete application for land (Schedule I) so that action can be taken to re-alienate the said land together with application registration fee of $5.00. Please also send a photostat copy of quit rent receipt for 1976."

By Originating Motion dated June 22, 1976, the applicant applied for an order that the approving authority be ordered forthwith to approve its application for sub-division upon the usual terms and conditions, and for such other orders or relief as the court deems fit. In a supporting affidavit, the Chairman of its Board of Directors, Tunku Mustapha ibni Tunku Besar Burhanuddin, stated that according to the Master Zoning plan of the City of Kuala Lumpur the land was within the commercial zone, that the approving authority had acted illegally in refusing to consider and approve the application and in making the applicant to surrender the land and to re-apply for the alienation of the part to be retained by the applicant to be held on a 99-year lease and further that the approving authority's action was unconstitutional, being contrary to Article 13(1) of the Constitution.

Article 13(1) of the Constitution reads: —

"13. (1) No person shall be deprived of property save in accordance with law."

On May 24, 1978, the learned trial judge gave judgment for the applicant, and ordered: —

(1) that the Land Executive Committee approve the application for conversion in terms of the proposal regarding conversion contained in the letter of the Director of Lands and Mines, Federal Territory, dated March 22, 1976, but excluding the condition regarding the 99-year lease; and

(2) that the Land Executive Committee approve the application for sub-division in terms of the proposal pertaining to sub-division contained in the same letter but there should be no surrender of title in the manner described in it and further that the Registrar shall issue title in continuation of the grant in perpetuity to the sub-divided lots to be retained by the applicant in accordance with section 202(3)(a) of the Code.

The Committee appealed to us.

There is a similar case pending in the High Court at Ipoh and at our suggestion counsel for the Committee agreed to drop before us the several technical objections to this application, so that we can dispose of the substantive questions in issue to which the surviving grounds of appeal give rise.

As the appeal was argued before us, these questions are two:

(1) whether the Committee has power to make the developer give up its freehold title and receive in exchange a 99-year lease; and

(2) if not, whether this court can order the Committee to approve the developer's applications but leave intact its freehold title.

Question 1

Taking question 1 first, the Committee may approve an application for variation of express condi-

tion as submitted, or it may approve it with amendments.

If it approves it as submitted, the question of consent does not arise, as consent is implicit in the application.

If it approves it with amendments, the consent of the applicant is required, in view of the words I have italicized in subsection (4) of section 124 above.

In either case the Committee must then direct the new or amended condition to be endorsed on the document of title. The Committee contended that the words "compliance with such other requirements as the State Authority may think fit" which I have italicized in paragraph (c) of subsection (5) of section 124 allowed it to make the applicant here accept only a lease in exchange for his title in perpetuity. With respect I do not agree. If the Committee is right, it would mean that it can unreasonably impose a condition that is irrelevant to the permitted development, such as, to take an absurd example, that the applicant should wear a beard for the rest of his life or that he should fly once round the moon. In my judgment, the Committee must act reasonably and may only impose conditions relevant to the permitted development and does not have the drastic right to make the applicant give up title in perpetuity and receive in place of it only a 99-year lease.

The proprietor of land such as the one here has a *right* under section 92(2)(a) to sub-divide his land, subject to the Code, to any restriction in interest to which the land is subject, and subject to Chapters 1 to 3 of Part Nine of the Code (which deal with subdivision, partition and amalgamation of land).

When a developer surrenders part of his land for use as access roads, etc., he acts under section 200 of the Code and if it satisfies the conditions set out in subsection (2) of section 201, the approving authority has no alternative but to approve the surrender.

Various steps follow approval and they are all set out in section 201. The approving authority revises the quit rent, notifies the applicant of approval and the revised quit rent and makes a memorial of the surrender on the register and issue documents of title, subsection (4). Then the part of the land retained by the applicant is re-surveyed and on completion of the survey the Registrar or Collector, as the case may be, takes action under paragraph (a) of subsection (3) of section 202. Note the words used therein:

"the Registrar or Collector shall issue title in *continuation to the part so retained* as if he were issuing title *in continuation to [that] land as a whole.*" (I believe that the omission from the text of the word within square brackets was an inadvertent mistake).

Be it noted that title to be issued for the part to be retained must be in continuation of title to the land as a whole. If title to the whole land is one in perpetuity, then it follows that title to the part retained must also under this section 202 be one in perpetuity. In my judgment, this section is the clearest authority for the proposition advanced by the developer here, that the Committee cannot do what it claims it has power to do.

I am fortified in my view by decisions on the Town and Country Planning Act in England. There too a land owner is not free to do what he likes with his land but must in certain circumstances first obtain planning approval and the planning authority may refuse permission; or may grant permission, in the words of section 14(1) of the Town and Country Planning Act, 1947:

"either unconditionally; or subject to such conditions as they think fit."

In *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government*[8] Lord Denning said at page 633 that the "condition [imposed by the planning authority], to be valid, must fairly and reasonably relate to the permitted *development*". These words were expressly approved by the House of Lords in *Fawcett Properties* v. *Buckingham County Council.*[9] For instance Lord Keith said at page 515:

"under section 14(1) of the Act, the planning authority may grant permission to develop land 'subject to such conditions as they think fit'. I agree with what my noble and learned friend, Lord Denning, said in *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government* that 'conditions to be valid, must fairly and reasonably relate to the permitted development'."

Lord Jenkins said at page 521:

"The law ... may be thus summarised:—

(i) Under section 14(1) of the Act of 1947 the respondents as local planning authority were empowered to grant permission for the proposed development either unconditionally or subject to such conditions as they thought fit or might refuse permission and under section 36 they were enjoined in the exercise of their functions to have regard to the provisions which, in their opinion, would be required to be included in the development plan for securing the proper planning of the area.

(ii) The power to impose conditions, though expressed in language apt to confer an absolute discretion on a local planning authority to impose any condition of any kind they may think fit, is, however, conferred as an aid to the performance of the functions assigned to them by the Act as the local planning authority thereby constituted for the area in question. Accordingly, the power must be construed as limited to the imposition of conditions with respect to matters relevant, or reasonably capable of being regarded as relevant, to the implementation of planning policy. This accords with the concluding passage in section 36 above referred to. As was said by Lord Denning in *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government*:

'The principles to be applied are not, I think, in doubt. Although the planning authorities are given very wide powers to impose 'such conditions as they think fit', nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest'."

Lord Denning himself sat in the House of Lords case of *Fawcett* and at page 518 he said:—

"The local planning authority are empowered to grant permission to develop land 'subject to such conditions as they think fit'. But this does not mean that they have an uncontrolled discretion to impose whatever conditions they like. In exercising their discretion, they must, to paraphrase the words of Lord Greene, M.R. in *Associated Provincial Picture House, Ltd.* v. *Wednesbury Corpn.*[10] have regard to all relevant considerations and disregard all improper considerations, and they must produce a result which does not offend against common sense; or to repeat my own words in *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government*, the conditions, to be valid, must fairly and reasonably relate to the permitted development; or, yet again, to borrow the words of Lord MacNaghten and Lord Wrenbury in this House, a public authority which is entrusted

with a discretion must act reasonably: see *Westminister Corpn.* v. *London & North Western Ry. Co.*,[11] *Roberts* v. *Hopwood.*[12] Out of these various shades of meaning I am not sure that the last is not the best; for it puts planning conditions on much the same footing as bye-laws made by a local authority, to which they are so closely akin. Indeed, I see no difference in principle between them. As with bye-laws, so with planning conditions. The courts can declare them void for unreasonableness, but they must remember that they are made by a public representative body in the public interest. When planning conditions are made, as here, so as to maintain the green belt against those who would invade it, they ought to be supported if possible. And credit ought to be given to those who have to administer them, that they will be reasonably administered: see *Kruse* v. *Johnson.*"[13]

English cases are of course decisions on the peculiar words used in the Town and Country Planning Act, whereas here we are concerned with the peculiar words used in the National Land Code, but nevertheless I am of the opinion that English cases afford principles that may be followed here. What are these principles? They are:

1. The approving authority does not have an uncontrolled discretion to impose whatever conditions it likes.
2. The conditions, to be valid, must fairly and reasonably relate to the permitted development.
3. The approving authority must act reasonably and planning conditions must be reasonable.
4. The approving authority is not at liberty to use its power for an ulterior object, however desirable that object may seem to it in the public interest.

Applying these principles to the present case, it is plain, in my judgment, that the Committee does not have the power it claims to have. The condition which the applicant objected to does not relate to the permitted development, is unreasonable, and is used for an ulterior object, the object being to bring developed land into line with newly alienated land as to which, we are told, since the war only leases, not titles in perpetuity, are granted. However desirable this object may seem to the Committee, it has no power under the law to achieve it in the way used here.

Question 2

After holding that the Committee does not have the power it claims, should this court order it to approve the developer's applications but leave intact its freehold title?

I do not think so. As was said by Lord Greene M.R. at page 685 in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation,*[10] the power of a court to interfere in these planning matters is not that of an appellate authority to override a decision of the approving authority, but is that of a judicial authority which is concerned, and concerned only, to see whether the approving authority has contravened the law by acting in excess of the powers which Parliament has confided in it. This statement was cited with approval by Lord Jenkins at page 521 in *Fawcett Properties* v. *Buckingham County Council.*[9]

I would therefore agree with my brother Raja Azlan Shah F.J. that these applications should be remitted for reconsideration by the Land Executive Committee in light of the law set out in this judgment.

In reconsidering this matter, it is hoped that the Committee will bear in mind that, in our view, the letter of March 22, 1976, is not a mere letter containing counter-proposals, as contended by its counsel before us, but conveyed the Committee's decision *approving* the developer's applications, subject to the conditions set out therein, and that it is now too late for it to contend that the applicant had not complied with section 136(1)(b) of the Code, since the letter made no mention of this section nor of non-compliance with anything by the applicant. It should also be said that this is not an ordinary case of, say, padi land whose proprietor has unsuccessfully applied for the condition to be changed to commercial nor of, say, residential land whose proprietor has unsuccessfully applied for the condition to be changed, so that he can build a factory or other commercial building in a residential area. The land here is in a commercial zone, the City Planner has no objection to the proposed development, and the Land Executive Committee has approved the various applications of the applicant, and the developer has agreed to all the conditions imposed, except the one which the trial judge and this court say the Committee has no right to insist on.

In reconsidering these applications, the Committee should act fairly and not arbitrarily. There must be no bad faith and no dishonesty, though in fairness to everybody concerned nobody has suggested that on the part of the Committee. There must be no unreasonableness, no attention to extraneous circumstances, no disregard of public policy, and things of that sort — things mentioned by Lord Greene, M.R., at page 682 in *Associated Provincial Picture House* v. *Wednesbury Corporation.*[10] Above all, in the Malaysian context, the Committee should bear in mind avowed official policy to promote development, to provide as much housing as possible ("property-owning democracy"), that promptness in approval enables purchasers to acquire property and homes at more or less current prices, that delay in approval, on the other hand, apart from causing dissatisfaction and breeding corruption, leads to delay in completion of projects and forces purchasers to pay prices swollen over time by inflation, and hinders national development. It is a mistake to suppose that delay in approval harms developers. Delay inflates the value of their land and they can get round increased building and other costs by simply passing them down to their customers.

The order of the court is that the orders of the learned trial judge be set aside and instead there shall be an order that these applications be remitted for reconsideration by the Land Executive Committee in accordance with the law.

What would happen if the Committee were to ignore the order of the court? As to this, I wish to make two observations.

First, in my experience, no Government department or ministry has ever set the courts at defiance. Secondly, it would not be out of place to reproduce the following words from the judgment of the Privy Council at page 28 in *Fischer* v. *Secretary of State for India in Council*: [14]

"But then, it was asked, what would happen if the Collector ignored the order of the Court? What remedy would the appellant have if he had omitted to ask for specific relief against the Collector? It is highly improbable that any officer of the Government would set the Court at defiance. It is impossible to suppose that the Government would countenance such conduct as that. But the remedy in such a case, if it did occur, would be simple enough. Every order such as that which the appellant asks for carries with it liberty to apply. On a proper application and on proper notice being given it would be found that the arm of the Court would be long enough to reach the offender, whatever his position might be."

The appellant shall pay the costs of this appeal.

Raja Azlan Shah Ag. C.J. (Malaya): This is an appeal from a judgment of the High Court, Kuala Lumpur, declaring that a condition imposed by the Land Executive Committee, Federal Territory, when approving of a proposed conversion and sub-division under sections 124 and 137 of the National Land Code was invalid. The judgment was given in an action brought by the respondents as the registered proprietors of a parcel of town land held under Grant No. 2412, Lot 82, Section 53, measuring 31,853 sq. ft. in the city of Kuala Lumpur ("the said land"). The defendants were the Land Executive Committee, Federal Territory, and they are the appellants in this appeal.

We have been informed that this is the second case in which the question has arisen for determination in our courts. The first case was in the High Court, Ipoh, where judgment was reserved pending the determination of this appeal. It therefore falls to us to determine for the first time what are the considerations by which the courts should be guided. Before dealing with the important question of law of which the appellants have sought to obtain a determination in this appeal, it is necessary, at the outset, to state briefly the relevant facts, none of which are disputed.

In 1900 the respondents' predecessor was granted the said parcel of land in perpetuity under the provisions of the Land Enactment, 1911 (now repealed), subject to three express conditions, one of which was that "the grantee shall within two years from the date of the grant build upon the land a substantial house to the value of $250", in default the said land would revert to the Government. In March, 1974 the respondents became the registered proprietors.

The respondents proposed to develop it for commercial purposes, i.e., to build a 3 four-storey shophouses on 3 lots and a four-storey hotel complex on the remaining 4 lots.

The legal position is this. All land alienated before the commencement of the National Land Code is subject to an implied condition that it shall be used for agricultural purposes (section 53). There is an exception, that is, the section does not apply to such land which is already subject to an express condition. Therefore the said land is still subject to the 3 express conditions (section 104), and if the respondents proposed to develop it for commercial purposes, that condition must be amended. Hence the necessity to apply for amendment to the Land Executive Committee (section 124(1)(c)). Further, since the said land is to be sub-divided into separate lots to be held under separate titles for the purpose of erecting the shophouses and the hotel complex, application for permission to sub-divide it must also be made to the Land Executive Committee (section 137).

The respondents did that in early 1975. They also applied to surrender a part of the said land for the purpose of a service road, side lanes and back lane (section 200). That is in accordance with the approved lay-out plan.

The Land Executive Committee, by letter dated March 22, 1976, gave the respondents the approval they applied for, but subject to certain conditions. First, the respondents had to surrender the whole of the said land and in return it would alienate part of it as comprised in the 4 lots for the building of a four-storey hotel and the 3 lots for a shop site; secondly, the grant in perpetuity would be substituted with a registry title of 99 years lease; thirdly, the express condition would be restricted to commercial building; fourthly, documents of title would not be issued and compensation would not be paid for the areas required for road reserve; and fifthly, additional premium in the sum of $43,392 based on gross acreage of the land to be issued with new titles, i.e., 18,080 sq. ft. at $2.40 must be paid within 6 months.

It is of course well known, and it would be unrealistic to pretend that it is not, that the respondents have a strong feeling that they have never had their case determined by the Land Executive Committee in accordance with law, or to borrow a recent phrase of Lord Russell of Killowen in *Fairmount Investments Ltd.* v. *Secretary of State for the Environment*[15] that in the circumstances the respondents have not had "a fair crack of the whip." They appealed to the High Court under the provisions of section 418 of the National Land Code, and on their behalf their counsel has cogently submitted and contended that that is the true position. At the hearing a number of preliminary points regarding procedure were raised and argued by Senior Federal Counsel but the learned judge rejected them. We are no longer concerned with those points as they were, quite properly, abandoned in this Court.

It is important to note that the respondents consented to surrender part of the said land for the purpose of a service road without compensation. But they objected strongly to exchange the title in perpetuity for a 99 year lease. Therefore the only point of any public importance that has emerged in the course of the argument is whether the condition imposed by the Land Executive Committee was valid. That condition was challenged on the ground that the Committee went beyond its powers and therefore the condition was *ultra vires*.

It would appear that the Land Executive Committee in granting approval for conversion, is relying on the provisions of section 124(5)(c) which reads thus: "Any direction given by the State Authority under this section may be made conditional upon all or any of the following matters — (c) compliance with such other requirements as the State Authority may think fit." The learned judge seems to think that the power given by the legislature to the Land Executive Committee by the section to impose conditions as it may think fit is restricted to conditions that it may otherwise impose under the National Land Code or under any other written law, and for that reason he held

that the Committee had exceeded its jurisdiction in directing approval for conversion subject to the condition. In my opinion the learned judge came to the right decision, though not for the right reason.

In my opinion, the present case falls to be decided on well established principles and they are to be found in the cases decided under the (U.K.) Town and Country Planning Acts. It is unfortunate that neither in the court below nor in this court has reference been made to any of them. The Acts empower planning authorities to refuse permission or to grant permission unconditionally or to impose such conditions "as they think fit". On principle and authority, the discretionary power to impose such conditions "as they think fit" is not an uncontrolled discretion to impose whatever conditions they like. In exercising their discretion, the planning authorities must, to paraphrase the words of Lord Greene M.R. in *Associated Provincial Picture Houses, Ltd.* v. *Wednesbury Corpn.*,[10] have regard to all relevant considerations and disregard all improper considerations, and they must produce a result which does not offend against common sense; or to repeat Lord Denning M.R.'s words in *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government*,[8] approved in *Fawcett Properties Ltd.* v. *Buckingham County Council*)[9] the conditions to be valid must fairly and reasonably relate to the permitted development. The dictum of Lord Denning M.R. has been frequently quoted and followed in these matters. See *R.* v. *Hillingdon Council, Ex parte Royco Homes Ltd.*[16] Lord Denning said (page 572):

"The principles to be applied are not, I think, in doubt. Although the planning authorities are given very wide powers to impose 'such conditions as they think fit', nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use these powers for an ulterior object, however desirable that object may seem to them to be in the public interest."

Applying the principles stated above, what is the effect of the condition under consideration? I read the affidavit of the Chairman, Land Executive Committee as claiming an unfettered discretion to grant or reject any application under section 124 or impose such conditions or other requirements as the Committee think fit. I cannot subscribe to this proposition for a moment. Unfettered discretion is a contradiction in terms. My understanding of the authorities in these cases, and in particular the case of *Pyx Granite* (*ante*) and its progeny compel me to reject it and to uphold the decision of the learned judge. It does not seem to be realised that this argument is fallacious. Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasise what has often been said before, that "public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place", (per Danckwerts L.J. in *Bradbury* v. *London Borough of Enfield.*[17])

The Land Executive Committee is a creature of statute, and therefore possesses only such power as may have been conferred on it by Parliament. Therefore when a power vested in it is exceeded, any act done in excess of the power is invalid as being *ultra vires*. If authority is needed for what may be considered as axiomatic, I need only refer to the cases of *Chertsey U.D.C.* v. *Mixnam's Properties, Ltd.*[18] and *Hall & Co. Ltd.* v. *Shoreham-by-Sea U.D.C.*[19] In the former case, a statute required the occupier of land to obtain a licence before he used his land as a caravan site, and in granting such a licence the authority were empowered to impose such conditions " as the authority may think necessary or desirable to impose", it was held that these conditions must be confined within the general purpose of the Act, and in so far as they exceeded this, they were void. In the latter case, Willmer L.J. cited the well known judgment of Lord Greene M.R. in *Associated Provincial Picture Houses* (*ante*) which has several times been approved in the House of Lords, that it is in excess of power to "come to a conclusion so unreasonable that no reasonable authority could ever have come to it", and he held that the condition to be "utterly unreasonable and such as Parliament cannot possibly have intended".

For the above reasons, it does not seem to me that the decision of the Land Executive Committee can possibly be regarded as reasonable or as anything other than *ultra vires*. It had exceeded its power and the decision was therefore unlawful as being an unreasonable exercise of power not related to the permitted development and for an ulterior purpose that no reasonable authority, properly directing itself, could have arrived at it. The Committee, like a trustee, holds power on trust and acts validly only when acting reasonably. In such circumstances I would follow the dictum of Hodson L.J. in *Pyx Granite* (*ante*, page 579), to the effect that, if a condition is held to be *ultra vires*, it nullified the whole planning permission. For it must be assumed that without the impugned condition the permission would never have been granted.

It remains to deal with the order made by the learned judge. He found that the respondents had fulfilled all the conditions under the National Land Code and accordingly he made an order to the effect that the Land Executive Committee approve the applications for conversion and sub-division but excluding the impugned condition, and that the Registrar issue titles in continuation of the grant in perpetuity to the sub-divided lots retained by the respondents in accordance with section 202(3)(a) of the National Land Code. With respect, that is not an appropriate order to make and one which certainly does not commend itself to this Court. In the first place it must be made clear that the existence of a statutory remedy is no bar to an action for a declaration. This case falls within the general principle that the jurisdiction of the High Court is not to be taken away without express words; and this applies to an action for a

declaration: see *Pyx Granite* (*ante*). Secondly, all that a declaration does is to declare the rights of the parties, and the effect of making a declaration would be that it would give the Land Executive Committee an opportunity of having second thoughts at the problem. Lastly, it is not the province of the courts to review the decisions of government departments merely on their merits. Government by judges would be regarded as an usurpation. That clear statement of principle has since been approved and applied by the appellate courts. In *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* (*ante*), Lord Greene M.R. in the course of a judgment since approved by the House of Lords in *Smith* v. *East Elloe Rural District Council*,[20] and in *Fawcett Properties Ltd.* v. *Buckingham County Council* (*ante*), in dealing with the power of the court to interfere with the decision of a local authority which has acted unreasonably, said (page 686):

"The power of the court to interfere in each case is not that of an appellate authority to override a decision of the local authority, but is that of a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in it."

That is the reason for such cases to be remitted to the relevant authority for a fresh consideration and conclusion according to law. In *Kingston-upon-Thames Royal London Borough Council* v. *Secretary of State for the Environment*,[21] the case was sent back to the Secretary of State for reconsideration; in *R.* v. *Hillingdon London Borough Council* (*ante*), the Council was required to reconsider the application for planning permission and reach a conclusion on it according to law. In my opinion the appropriate order would be to remit the case to the Land Executive Committee for reconsideration and reach a conclusion on it according to law.

I am therefore of the opinion that this appeal should be dismissed with costs.

Chang Min Tat F.J. (read by Suffian L.P.): When the proprietor of a piece of land seeks to develop it other than in accordance with the use indicated on his document of title, he must first seek to convert the use to the purpose he has in mind. Here the proprietor owns a piece of land which he holds in perpetuity. It is for a house for residential purposes. He sought to use the land for commercial purposes, more particularly for a 4-storey hotel complex and three shop-houses.

Having first ascertained that the development he had in mind was in accordance with the town-planning for the area, he had then to apply for conversion of the category of use to which the land could be put. Also for this purpose, the land was more conveniently to be sub-divided into 7 lots, on four of which the hotel could be built and on the other three, the shop-houses. There would have to be a further sub-division for the construction of access roads and back-lanes. He would therefore have to obtain sub-division of the land and he would also have to surrender the lots for roads, etc. All these constitute what may be called the mechanics of development.

Section 124(1) of the National Land Code enables a landowner to apply for conversion, section 146 for amalgamation if his holdings are in several lots (which is not so in this case) and section 137 for sub-division. He would have to surrender the parts of his land required for the construction and the maintenance of the necessary roads and lanes to the Government: section 136(2)(a) and (b).

In the case under appeal, the respondent landowner made the necessary applications for conversion and sub-division. He received a reply dated March 22, 1976 from the Director of Lands and Mines of the Federal Territory advising that his application was approved subject to several conditions. The respondent was prepared to accept the several conditions relating to the imposition of a new premium and new quit rents and the payment of survey fees but not the other condition that he would surrender his title in perpetuity for a leasehold of 99 years. He accordingly took this action against the Government.

Government took the view that the letter of March 22, 1976 was a mere offer and not an approval on terms. With respect, I agree with the Lord President and Raja Azlan Shah Ag. C.J. that it was not a mere counter-proposal but an intimation of the approval subject to the conditions therein set out.

As for the surrender of the parts of the land for road reserve, the respondent agreed to it. It was, in my view and with respect, not in issue.

What was in issue was the right of the Land Executive Committee to impose a condition that the nature of the holding be changed for what is appreciably a lesser one. Quite clearly, it had to consider the application on its merits. If the landowner has the right to apply for conversion, the Committee has the corresponding duty to consider it, properly and reasonably, on its merits. So long as the application fits in with the town-planning for the area and makes for the reasonable and proper development of the land, the Committee must, if it is to perform its statutory functions, approve it, subject to what conditions it is empowered by law to impose. Such conditions are expressed in section 124(5) to be all or any of the following:

(a) the payment of a further premium,

(b) the reservation of a new rent,

(c) compliance with such other requirements as the State Authority may think fit.

The question then is whether under sub-section (c) above, Government may demand a depreciation in the tenure. With respect, I agree with the views of the Lord President and Raja Azlan Shah Ag. C.J. that it may not, and that the State Authority would be acting outside the powers conferred on it if it seeks to do so.

I would therefore agree that the appeal by Government be dismissed with costs and would respectfully signify my agreement with the order that is proposed to be made.

Appeal dismissed.

Solicitors: *Chooi & Co.*